CUSTOMS, EXCISE & SERVICE TAX APPELLATE TRIBUNAL
ALLAHABAD

REGIONAL BENCH - COURT No. I

Service Tax Appeal No. 70643 of 2019-[SM]

(Arising out of Order-in-Appeal No. NOI-EXCUS-001-APPL-1578-18-19 dated 10/10/2018 passed by Commissioner of Central Goods & Service Tax (Appeals), Noida)

M/s Swift Engineers **.....Appellant**

(A-122, Sec-83, Noida Phase-II, G.B. Nagar-201305)

VERSUS

Commissioner of CGST, **....Respondent**

(Noida)

APPEARANCE:

Shri Kartikeya Narain, Advocate for the Appellant
Shri Pawan Kumar Singh, Supdt Authorised Representative for the Respondent

CORAM: HON'BLE MR. ANIL G. SHAKKARWAR, MEMBER (TECHNICAL)

FINAL ORDER NO-71552 / 2019

DATE OF HEARING & DECISION : 13 August, 2019

PER: ANIL G. SHAKKARWAR

After allowing the miscellaneous application with consent of both the parties appeal is taken up for final decision. After hearing both the sides duly represented by Shri Kartikeya Narain, learned Advocate appearing on behalf of the appellant and Shri Pawan Kumar Singh learned Superintendent Authorised Representative appearing on behalf of revenue, I note that investigation was initiated against the appellant by revenue and statement of Shri Ajay Sengar, Proprietor of the appellant was recorded on 03.01.2017 and on the basis of said statement and figures reflected in Form 26AS and balance sheet total turnover of the appellant was treated as consideration for providing Erection, Commissioning and Installation Service and demand of Service Tax of around Rs.18 lakhs was raised through show cause notice dated 16.01.2017 for the period from April, 2011 to March, 2015. The appellant contested the show cause notice. However Original Adjudicating Authority confirmed the demand of service tax of Rs.17,69,319/- and ordered to pay interest and imposed penalties. Aggrieved by the said order, appellant preferred appeal before Commissioner (Appeals). The learned Commissioner (Appeals) did not interfere with the order of Original Adjudicating Authority and therefore, appellant is before this Tribunal.

2. Learned Counsel for the appellant has readout the statement of Shri Ajay Sengar as reproduced in para 9 of the said show cause notice dated 16.01.2017 and also submitted that some of the transactions were in respect of manufacture, some of the transactions were in respect of sale for which VAT return was filed and was brought to the notice of Original Adjudicating Authority and submitted that without any scrutiny, it was presumed that the entire turnover was in respect of provisions of Erection, Commissioning & Installation Service. He has argued that the said show cause notice is not sustainable, since it has not excluded that the consideration for sale and for manufacture and therefore, the impugned order is not sustainable.

3. Heard the learned Authorised Representative who has submitted that learned Commissioner (Appeals) has dealt with valuation aspect covered by the para 6 of the impugned Order-in-Appeal and did not find any infirmity in appellant's plea for re-quantification of demand.

4. I have carefully gone through the submissions made by both the sides and perused the records. For the sake of ready reference, I reproduce para no.9 of the said show cause notice dated 16.01.2017 bellow:-

> "9. Whereas, in response to Summons dated 26.09.2016, Ajay Sengar (PAN ATCPS904OB) S/o Sh. Nar Narayan Singh, Aged 44 YeaS R/o Flat No. 701, NT-3, Eldeco, Sector-93, Noida, Sole Proprietor of M/s Swift Engineers, A Block, Plot No. 122, Sector-83, Noida Phase-Ii 201304, appeared and tendered his statement on 03/01/2017, which was recorded under Section 14 of the Central Excise Act, 1944 as made applicable in the Service Tax matters under Section 83 of the Finance Act, 1994, wherein he inter-alia submitted that (**RUD-14)**:
>
> *i. M/s Swift Engineers is engaged in manufacturing of engineering goods. The customers/clients give purchase orders with drawings to develop and manufacture engineering goods. However, in few cases different parties (customers/clients) provide material upon which we do processing/machining/engineering Sometimes the parties (customers/clients), send the material to our factory for processing/machining/engineering and some time when the material is bulky/voluminous/heavy, the desired processing/machining/engineering is done at the parties (customers/clients) factory premises/site. For sending the materials to our factory at A-122,*

Sector-83, Noida, the parties, issue Excise - Job work challan, which is returned back to them along with our bill after the desired processing, is completed. Since the parties (customers/clients) giving us the contact for processing/machining/engineering are registered with Central Excise department and issue job work Challan, no Central excise duty or Service tax is leviable and or payable by us on such work.

ii. *In cases where, the job order/contract, for processing/machining/engineering is at the factory premises/site of the clients/customers, we send our fabrication team along with tools and tackles, consumable to the said premises and said job-work is undertaken and completed as per their specification. The ownership of the fabrication materials (input) lies with the clients/customers. We only charge for the consumables, weighted cost of tools and tackles and job-work/processing/fabrication/labor charges and profit. To execute such orders we do not purchase any materials (inputs), as the material (inputs) is provided by the clients/customers, at their site.*

iii. *The work undertaken by us for M/s Indian Technomac Company Limited, Vill. Jagatpur, Misserwala, Distt. Sirmour-(H.P) – 173021 was executed at the site upon expansion of the factory, wherein we undertook fabrication. Erection and commissioning of the factory line consisting of different sheds. We did not purchase any structural steel/girders (Raw materials) for execution of said contact; hence we have not charged any amount under this head. We have billed and charged only for the consumables, weighted cost of tools and tackles and job-work/processing/fabrication/labor charges and profit from them.*

iv. *Further, in case of work undertaken by us for M/s Indian Technomac Company Limited, Vill. Jagatpur, Misserewala, Distt. Sirmour-(H.P)-173021 was executed at the site upon expansion of the factory, wherein we undertook fabrication, Erection and commissioning of the factory line consisting of different sheds, we were not aware about the chargeability of Service Tax. Further the firm has been facing severe financial crunch, hence, service tax has not been deposited."*

5. Further, para no.15 of the said show cause notice deals with computation of service tax liability taken into consideration by revenue for issue of show cause notice. I, therefore, reproduce para no.15 of the said show cause notice bellow:-

Whereas, it appears that on the basis of records/documents, following table enumerate the service tax liability, which is as under:

Details	2011-12	2012-13	2013-14	2014-15	Total
As per FORM 26AS- Amount received under Section 194C of the IT Act, 1961-"Payments to Contractors and Sub-contractors"-	5424137	4759596	594195	230130	11008058
Gross Receipts as per Profit and Loss Account of the Proprietory business as per the Balance Sheet filed with ITR-4, as provided by the Income Tax Authorities.	5424137	4759596	4903351	965150	16052234
Total Taxable Value for calculation of Service Tax	5424137	4759596	4903351	965150	16052234
Rate of Service Tax	10.30	12.36	12.36	12.36	
Service Tax payable on total value of Services	558686	588286	606054	119293	1872319

Whereas, it appears that the party despite summons and repeated letters neither submitted Income ledgers, Invoices for the period under reference nor explain the difference in the Balance Sheet and FORM 26AS and also no explanation was given during recording of the statement on 03.01.2017. Since the party failed to explain or provide any corroborative evidences for the difference in the figures as reflected in "Balance Sheet" and "FORM 26AS" for the years 2011-12 to 2014-15, therefore the due Service Tax has been calculated on the basis of the "Balance Sheet" of the party as provided by the Income Tax authorities, which shows higher value, than the figures being reflected in the FORM 26AS. Further, the party did not produce any documents/ records/ Job-work register/ Job work challans issued by the principal manufacturer, for the work undertaken claiming to be job-work of the excisable goods. Furthermore, as submitted during the recording of statement, the explanation for difference in figures, have also not been submitted by the party, hence, due service tax has been calculated on all the gross receipts as per the Balance Sheet, as provided by the Income Tax Authorities."

6. On perusal of above stated two paras from the show cause notice, it is very clear that appellants were engaged in the manufacture of engineering goods and they were receiving job for job work on Central Excise Job work Challans and after the job was done the manufactured goods were returned to the principal manufacturer on the basis of said job work challan and whenever the jobs were so heavy that the job cannot be sent to the manufacturing unit, the appellant used to complete the job at site. In the said statement Proprietor of the appellant has clearly mentioned that since the manufacturing activity was being done by the appellant for principal when the inputs were

received by the appellant on job-work challan, there was no question of payment of excise duty by the appellant. When such information was available with revenue that the appellant is doing job work on job work challan in their factory to treat entire transaction to be consideration for providing Erection, Commissioning & Installation Service is not sustainable.

7. Therefore, the whole proceedings are vitiated and therefore, I set aside the impugned order and allow the appeal. Appellant shall be entitled to consequential relief, as per law.

(Dictated and pronounced in open court)

(Anil G. Shakkarwar)
Member (Technical)

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